

**CITY OF VANCOUVER
SOUTHEAST FALSE CREEK AND OLYMPIC VILLAGE
INTEGRATED SITE SERVICING DESIGN SERVICES**

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made as of the ____ day of _____, 2005

BETWEEN:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

(the "City")

OF THE FIRST PART

AND:

[SUCCESSFUL PROPONENT'S LEGAL NAME, ETC. TO BE INSERTED]

(the "Consultant")

OF THE SECOND PART

BACKGROUND:

- A. By way of Request for Proposals No. _____ (the "RFP"), the City requested proposals from qualified/pre-qualified firms for the provision of [_____] on the City's Southeast False Creek and Olympic Village Project.
- B. In response to the RFP, the Consultant submitted a detailed proposal (the "RFP Proposal").
- C. After evaluating the Consultant's and other proponents' proposals, City Council authorized City staff to enter into negotiations with the Consultant for a legal agreement based on both the RFP and the RFP Proposal and on such other terms and conditions considered acceptable to the City and the Consultant.
- D. The City and the Consultant have now completed those negotiations and have agreed to the following terms and conditions.

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THE CITY AND CONSULTANT NOW AGREE AS FOLLOWS:

1.0 INTERPRETATION

1.1 The following words and terms, unless the context otherwise requires, have the meanings set out below:

“**Agreement**” means the agreement between the City and the Consultant as set out in the Contract Documents.

“**Business Day**” means a weekday (Monday to Friday) that is not a “holiday” as defined in the *Interpretation Act* of British Columbia.

“**City’s Project Manager**” means the City’s employee, or his or her delegate, who is authorized in writing to deal with the Consultant on behalf of the City in connection with the goods or services to be provided by the Consultant, or to make decisions in connection with the Contract Documents.

“**Contract Documents**” means this Professional Services Agreement, the Consultant’s RFP Proposal, the RFP and such other documents as listed in this Professional Services Agreement, including all amendments or addenda agreed between the parties.

“**Deliverables**” means each component of the services to be provided by the Consultant, as further defined in Schedule A - *Requirements*, Section 3.4 of the RFP.

“**Term**” means the term of this Agreement as specified in Section 12.

“**WCB OH&S Regulation**” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, including all amendments to or re-enactments of such Act or Regulations from time to time.

“**Work Site**” means the City’s property designated for the Southeast False Creek & Olympic Village Project, as further defined in the RFP.

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The following terms will have the meanings ascribed to them in the sections below in which they first arise:

"City Resources"	"Claims"
"Consultant's Project Manager"	"Deliverables"
"Laws and Regulations"	"Material"
"Project Schedule"	"Project Team"
"Services"	"Sub-Consultants"
"Waiver of Subrogation"	

1.2 The terms and conditions of this Agreement including all Appendices are complementary and what is called for by one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the terms and conditions of this Agreement, such terms and conditions will take precedence and govern in the following order of priority, from highest to lowest:

- 1.2.1 this Professional Services Agreement, excluding the Appendices;
- 1.2.2 Appendix D - Insurance;
- 1.2.3 Appendix E - Prime Contractor / Qualified Coordinator Agreement;
- 1.2.4 Appendix C - Consultant's Letter of Clarification;
- 1.2.5 Appendix B - RFP Proposal; and
- 1.2.6 Appendix A - RFP.

1.3 The section headings used in this Agreement are for convenience of reference only and do not affect its interpretation.

2.0 CONSULTANT'S SERVICES TO THE CITY

2.1 The Consultant will provide and be fully responsible for the following services (collectively, the "Services"):

- 2.1.1 Services as described in Part [___], Section [___] of the RFP attached as Appendix A;
- 2.1.2 Services as described in Part [___], Section [___] of the RFP Proposal attached as Appendix B;
- 2.1.3 Services as described in the e-mail letter of clarification from the Consultant to the City dated [_____] and attached as Appendix C;
- 2.1.4 The limits on, exceptions to, the Services as described in Part [___], Section [___] of the RFP Proposal; and

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- 2.1.5 [Note: List out all other relevant documentation describing Services].
- 2.2 The Consultant will be fully responsible for:
- 2.2.1 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Appendix D - *Insurance*;
 - 2.2.2 obtaining and paying for all permits and licenses necessary for the completion of the Services;
 - 2.2.3 adhering to the project schedule and deliverable deadlines for the Services as described in Part [___], Section [___] of the RFP Proposal (the "Project Schedule");
 - 2.2.4 maintaining and supervising the project team members as described in Part [___], Section [___] of the RFP Proposal (the "Project Team"); and
 - 2.2.5 scheduling, requesting and maintaining the stated requirements and resources to be provided by the City in order to facilitate the Consultant's performance of the Services as described in Part [___], Section [___] of the RFP Proposal (the "City Resources").
- 2.3 The Consultant represents and warrants to the City that the Consultant possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the satisfaction of the City.
- 2.4 The Consultant will perform the Services: (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered; (b) in accordance with sound current professional practices and design standards; and (c) in conformance with any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and courts having jurisdiction (collectively, "Laws and Regulations") applicable at the time of design.
- 2.5 The Consultant will commence the Services promptly and will use every reasonable endeavour to carry out the Services in such a manner so as to fulfill the completion dates (a) set out in this Agreement, (b) the Project Schedule (as defined in Section 2.2 above), and (c) where no such dates are set out in this Agreement, such completion dates as are reasonably specified from time to time by the City.

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- 2.6 The Consultant agrees that in the event the Consultant does not complete the Services to the satisfaction of the City during the term of this Agreement, the Consultant will spend such additional time (at its own expense) as is reasonably required to complete the Services.
- 2.7 The Consultant will not permit, do or cause anything to be done at any time which will allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the Work Site or to the Consultant's personal property within this Work Site.

3.0 PROJECT TEAM/MANAGEMENT

- 3.1 Subject to Section 3.2 below, the Consultant will utilize only the Project Team members named in Appendix [] for the provision of the Services.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Consultant may not make substitutions of Project Team members without the prior written consent of the City, whose consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Consultant or its affiliates.
- 3.4 The City may, with stated reasons and acting reasonably, request that the Consultant replace a Project Team member. The Consultant will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Consultant for any replacement Project Team member.

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4.0 SUB-CONSULTANTS

- 4.1 Except as expressly permitted pursuant to Section 3 above, the Consultant confirms that it does not intend to utilize any sub-contractors or sub-consultants for the performance of any part of the Services, except for the individual Project Team members named in Appendix [___], who may be retained by the Consultant on an independent or dependent contractor basis (the "Sub-Consultants") rather than a contract of employment basis.
- 4.2 Except as expressly permitted pursuant to Sections 3 and 4.1 above, the Consultant may not engage sub-contractors or sub-consultants for the performance of any part of the Services, unless the Consultant has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.3 The Consultant will administer, coordinate, and manage all Services provided by any Sub-Consultants, and will assume full responsibility to the City for all work performed by the Sub-Consultants in relation to the Services and will pay all fees and disbursements of all Sub-Consultants, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Consultant.
- 4.4 Where a Sub-Consultant is used by the Consultant under this Agreement, the Consultant will legally bind the Sub-Consultant to comply with this Agreement.
- 4.5 Nothing in this Agreement will create any contractual relationship between a Sub-Consultant and the City.

5.0 BASIS OF PAYMENT TO THE CONSULTANT

- 5.1 In consideration of the Services performed by the Consultant to the satisfaction of the City and in strict conformity with the terms of this Agreement, the City will pay the Consultant the fees and reimbursable expenses set out in this Agreement, plus the Goods and Services Tax as applicable.
- 5.2 Subject to the other terms of this Agreement, payment to the Consultant will be based on:
- 5.2.1 hours worked by the Project Team members in providing the Services multiplied by the hourly charge-out rates set out in Appendix [___], and

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- 5.2.2 the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.
- 5.3 Despite anything to the contrary in this Agreement,
- 5.3.1 the maximum total of the fees and disbursements to be paid by the City to the Consultant for each Deliverable will not exceed the amounts set out in Table 1 below for that Deliverable, and
- 5.3.2 as this is a “time and materials” contract (subject to a maximum fees and disbursements limit) and no portion of this Agreement is a “fixed price” contract for Services, accordingly:
- 5.2.3.1 where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable is less than the maximum amounts set out in Table 1 below, the City will only pay for the aggregate of the time and materials at the hourly rates and reimbursable disbursement amounts set out in this Agreement; and
- 5.2.3.2 where the aggregate of the time and materials utilized by the Consultant to deliver each Deliverable exceeds the maximum amounts set out in Table 1 below, the City will only pay the maximum amount applicable for that Deliverable in Table 1 below.

However, where some Deliverables are “under budget” and other Deliverables are “over budget”, the Consultant may be permitted (subject to approval by the City’s Project Manager) to transfer its time or material expenses between any of the different Deliverables referred to in Table 1 below.

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TABLE 1: Costs for Services

DESCRIPTION OF DELIVERABLE	SUB-COMPONENTS OF DELIVERABLE	SUB-COMPONENT DELIVERY DATE	MAXIMUM FEES & DISBURSEMENTS AMOUNT OF DELIVERABLE
Complete Services Delivery Date (Firm)		Dec. 1, 2005	
Total Amount for Complete Services =			\$[_____], not including GST or PST

- 5.4 Despite anything to the contrary contained in this Agreement, except for Section 6, the maximum liability of the City for all fees and disbursements for the complete Services will be the "Total Amount" set out in the last line of Table 1 above.
- 5.5 Where additional fees or disbursements are to be paid by the City to the Consultant for increases in the scope of the Services provided by the Consultant, they will not exceed the amount mutually agreed in writing pursuant to Section 6. The maximum amounts on fees and disbursements as set out in Table 1 above will in no way diminish the duties and obligations of the Consultant to provide the Services covered by this Agreement.
- 5.6 Subject to the maximum liability of the City under Table 1 above, disbursements for which the City will reimburse the Consultant will be limited to the following:
- Transportation costs, including travel time, for all the Project Team members to meetings requested by the City at locations other than the Consultant's offices to a maximum of \$0.41 per kilometre.
- 5.6.1 Long distance telephone calls, telegrams and telex.
- 5.6.2 Photocopies to a maximum of \$0.20 per page.

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- 5.6.3 Delivery of drawings, specifications or correspondence by courier, where this method of delivery has been requested by the City.
- 5.6.4 Provision of office space and related services at a job site (but only if first approved in writing by the City) where the Project Team members are performing management, inspection, construction supervision, administration or other field services as part of the Services.
- 5.6.5 Sub-Consultant fees and disbursements for drilling and soil sampling or other work, if first approved in writing by the City, which are required for the Consultant to carry out its duties under this Agreement.
- 5.6.6 AutoCAD licensing and other costs to a maximum of \$[] per hour when operated by a Project Team member in performing the Services.
- 5.6.7 Engineering software licensing and other costs for only the following engineering software, and only to a maximum of the following limits:
[] and \$[] per run;
[] and \$[] per run; and
[] and \$[] per run.
- 5.6.8 Printing costs, but only for the following: (a) large format plots, checkplots, and scanning to file at maximum of \$0.60 per square foot; and (b) large format colour plots at maximum of \$2.75 per square foot.

Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.

All other expenses not listed above are now deemed to be expressly included in the Consultant's fees.

- 5.7 If the Consultant has engaged Sub-Consultant(s) pursuant to Sections 3 and 4 above, then the Consultant will make full payment to those Sub-Consultant(s) for work performed in relation to the Services.
- 5.8 Where the City and Consultant have expressly stated in Table 1 (or by subsequent written agreement or amendment to Table 1) that certain Services to be performed by a Sub-Consultant are to be paid for separately from the other Services, the City will reimburse the Consultant for payments made to such Sub-Consultant(s) at amounts equal to the actual payments made to that Sub-Consultant by the Consultant without any additions for overhead and profit.

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- 5.9 The Consultant will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and pay rates of all Project Team members that have provided services for each Deliverable that month, the total amount of previous payments made by the City for that Deliverable, and the percentage completion for each Deliverable. Each invoice will show separately the applicable amount of the Goods and Services Tax and the Provincial Sales Tax.

Attached to each invoice will be copies of: (a) invoices for all disbursements claimed categorized according to Deliverable; (b) confirmation of payments made to Sub-Consultant(s) for the previous month for each Deliverable; and a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

The City will pay the Consultant on a time and materials basis, as discussed above, up to 90% of the maximum budget for each Deliverable, with the final 10% paid once all deliverables are received, reviewed and approved by the City's Project Manager.

- 5.10 Despite anything to the contrary in this Agreement, the City will never be obligated to pay the Consultant a greater percentage of total fees and disbursements than the degree of percentage completion of each Deliverable as set out in Table 1.
- 5.11 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Consultant's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within 30 days of approval.
- 5.12 The Consultant will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. All such accounts and records will not be disposed of by the Consultant without the prior written consent of the City. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Consultant and by such other means as will be reasonably necessary or advisable.

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6.0 CHANGES TO SCOPE OF SERVICES

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Consultant, vary the scope of Services to be provided by the Consultant. In that case and where this Agreement contains a delivery date(s) and/or limit(s) as to the maximum fees and disbursements to be paid to the Consultant in Table 1 for all or any part of the Services, such delivery date(s) and/or limit(s) will be adjusted as agreed to by both parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Consultant consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Consultant shall so advise the City's Project Manager within ten days (in writing) of such request or instruction. Without said written advice within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Consultant.

7.0 RELEASE AND INDEMNIFICATION

- 7.1 The Consultant now releases the City, its officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Consultant, Sub-Consultants, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Consultant acknowledges that the Consultant has inspected the site, agrees to accept the site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Consultant to perform the Services.
- 7.3 Despite the provision of insurance coverage by the City, the Consultant hereby agrees to indemnify and save harmless the City, its successors, assigns and authorized representatives and each of them from and against losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Consultant, Sub-Consultants, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of the City or its officers, employees or agents.

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- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.

8.0 INSURANCE

- 8.1 The Consultant now agrees to comply with the insurance requirements set out in Appendix D - *Insurance*.

9.0 WORKERS' COMPENSATION BOARD

- 9.1 The Consultant agrees that it will at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees and others engaged in or upon the Services. The Consultant agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such Worker's Compensation Board coverage against any money owing by the City to the Consultant. The City will have the right to withhold payment under this Agreement until the Workers' Compensation Board premiums, assessments or penalties in respect of the Services have been paid in full.
- 9.2 With respect only to the Services, the City now designates the Consultant as the Prime Contractor, and the Consultant now acknowledges and agrees to its designation as the Prime Contractor, for the purposes of the WCB OH&S Regulation.
- 9.3 Without in any way limiting the Consultant's obligations under the WCB OH&S Regulation, and by way of example only, the Consultant will:
 - 9.3.1 appoint and provide a qualified coordinator for the purpose of ensuring the coordination of health and safety activities at the Work Site;
 - 9.3.2 provide and receive and respond to all information required to be given, received or relayed by the Consultant (both as an employer and as the Prime Contractor) pursuant to the WCB OH&S Regulation; and
 - 9.3.3 no later than five (5) Business Days prior to conducting any Services on the Work Site, sign and deliver to the City, the "Prime Contractor/Qualified Coordinator Agreement" in the form attached as Appendix E.

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- 9.4 In addition to, and not in lieu of, the Consultant's obligations as the Prime Contractor, the Consultant will have a safety program acceptable to the Workers' Compensation Board and will ensure that all City and Workers' Compensation Board safety policies, rules and regulations are observed during any performance of the Services at the Work Site, not only by the Consultant but by all Sub-Consultants, workers, material suppliers and others engaged in the performance of the Services.
- 9.5 Prior to the commencement of any Services at the Work Site and where required by the WCB OH&S Regulations, the Consultant will:
- 9.5.1 complete and file a "Notice of Project" with the Workers' Compensation Board in compliance with Section 20.2 of the WCB OH&S Regulation;
 - 9.5.2 post the Notice of Project at the Work Site; and
 - 9.5.3 will provide a copy of the Notice of Project to the City's Project Manager and confirm in writing that the Notice of Project has been posted at the Work Site.
- 9.6 Prior to the start of the Term, the Consultant will provide the City with the Consultant's and all Sub-Consultant's Workers' Compensation Board registration numbers.
- 9.7 Prior to the start of the Term, and concurrently with making any application for payment under this Agreement, the Consultant will provide the City with written confirmation that the Consultant and all Sub-Consultants are registered in good standing with the Workers' Compensation Board and that all assessments have been paid to date.
- 9.8 The Consultant may or may not have received, as part of the Contract Documents, a "Pre-Contract Hazard Assessment" prepared by or for the City pursuant to the City's statutory obligations under the WCB OH&S Regulation (Section 119 of the Act) as an "owner of a workplace". Despite the City's statutory obligations, the Consultant now acknowledges and agrees that the Consultant may not rely on the "Pre-Contract Hazard Assessment" and now agrees to assume by the terms of this Agreement full responsibility for carrying out the City's obligations under Section 119 of the Act, including without limitation and by way of example only, conducting all due diligence inquiries of all applicable City staff and departments in order to ascertain what, if any, information is known or has been recorded by City staff about the Work Site that is necessary to identify and eliminate or control hazards to the health or safety of persons at the Work Site. The City now agrees to make all reasonable efforts to assist the Consultant in obtaining timely access to City staff and City records for this purpose.

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- 9.9 The Consultant will indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to:
- 9.9.1 unpaid Workers' Compensation Board assessments of the Consultant or any other employer for whom the Consultant is responsible under this Agreement;
 - 9.9.2 the acts or omissions of any person engaged directly or indirectly by the Consultant in the performance of this Agreement, or for whom the Consultant is liable pursuant to the Consultant's obligations as the Prime Contractor, and which acts or omissions are or are alleged by the Workers' Compensation Board to constitute a breach of the WCB OH&S Regulation or other failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including any and all fines and penalties levied by the Workers' Compensation Board; or
 - 9.9.3 any other breach of the Consultant's obligations under this Section 9.

10.0 CITY INFORMATION/APPROVALS

- 10.1 The City acknowledges that the Consultant's ability to provide the Services in accordance with this Agreement will be dependent on the City providing the City Resources in a prompt and timely manner as reasonably required by the Consultant. To the extent that the City fails to provide the City Resources, the Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will this delay or failure to provide City Resources constitute a breach of this Agreement by the City, nor will the Consultant be entitled to extra compensation for same.
- 10.2 No reviews, approvals or inspections carried out or information supplied by the City Resources will derogate from the duties and obligations of the Consultant (with respect to design or otherwise), and all responsibility related to the Services will be and remain with the Consultant.

11.0 COMMUNICATION BETWEEN CONSULTANT AND CITY

- 11.1 The City appoints _____, of the _____ Department, as the City's Project Manager for the purposes of this Agreement.

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- 11.2 The Consultant appoints _____, of the _____ Department, as its representative for the purposes of this Agreement (the "Consultant's Project Manager").
- 11.3 All material communication between the Consultant and the City regarding this Agreement, including performance of the Services, will be between the City's Project Manager and the Consultant's Project Manager.

12.0 TERM OF AGREEMENT

- 12.1 The Term of this Agreement will commence on _____, 2005 and will expire on _____, 200____.

13.0 TERMINATION

- 13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Consultant in whole or in part by giving 10 calendar days prior written notice (signed by the City's Project Manager) to the Consultant. If termination is not for cause, the Consultant will be paid at the rate prescribed for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind up costs incurred, if any, in closing out the Services or the part terminated.
- 13.2 Despite Section 13.1, in no event and under no circumstances will the Consultant's "necessary and reasonable wind up costs incurred" pursuant to Section 13.1 exceed [_____].

14.0 ASSIGNMENT

- 14.1 The Consultant will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Consultant will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Consultant have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Consultant, provided always that the Consultant:
- 14.1.1 first provides the City with reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and

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14.1.2 first provides the City with a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

15.0 CONFIDENTIALITY

15.1 The Consultant acknowledges that in performing the Services required under this Agreement, it will acquire information about certain matters which are confidential to the City, and such information is the exclusive property of the City. The Consultant undertakes to treat as confidential all information received by reason of its position as Consultant, and agrees not to disclose same to any third party either during performance of the Services or after the Services have been rendered under this Agreement.

16.0 NO PROMOTION OF RELATIONSHIP

16.1 The Consultant must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Consultant to perform the Consultant's obligations under the terms of this Agreement). The Consultant undertakes not to use "VANOC", "Vancouver 2010", the official emblem, logo or mascot of the 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Consultant undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between the Consultant and the IOC, the Olympics or the Olympic Movement.

17.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

17.1 All drawings, audiovisual materials, information, plans, models, designs, specifications, reports and other documents or products produced, received or acquired by the Consultant as a result of the provision of the Services (collectively, the "Material") will be the sole property of the City, and the City will have the right to utilize all of the Material for its benefit in any way it sees fit without limitation.

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- 17.2 The Material will be delivered by the Consultant to the City forthwith following the expiration or sooner termination of this Agreement, PROVIDED that the City may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Consultant requesting delivery by the Consultant to the City of all or any part of the Material, in which event the Consultant will forthwith comply with such request.
- 17.3 The Consultant hereby transfers title in and to the Material and assigns to the City sole copyright in the Material. The Consultant agrees that title to the Material is to be considered to have been transferred, and any copyright in the Material is to be considered to have been assigned by the Consultant to the City upon creation of the Material. The Consultant hereby irrevocably waives, in favour of the City, the Consultant's moral rights in respect of the Material. The Consultant will obtain in writing, from its personnel, its permitted consultants or from any other source used, all required assignments, waivers, including waivers of moral rights, releases of interest and acknowledgements necessary to transfer title to and copyright in the Material to the City.
- 17.4 The Consultant hereby represents and warrants that the portion of the Material produced by the Consultant (or its Sub-Consultants, if applicable) will not infringe any patent or copyright or any other industrial or intellectual property rights, including trade secrets.

18.0 NOTICES

- 18.1 Any notice required or permitted to be given to the Consultant will be sufficiently given if delivered in writing by the City's Project Manager to the Consultant's Project Manager personally or, if mailed, by registered mail to the last known address of the Consultant.
- 18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Consultant's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).

19.0 NON-COMPETITION

- 19.1 The Consultant agrees that during the Term of this Agreement and at all times thereafter, the Consultant will not, without the express consent of the City's Project Manager, assist any person to become acquainted with the clients of the City, and will not divulge or disclose the name or address of a client of the City and, without limiting the generality of the foregoing, will not take any advantage,

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directly or indirectly, of contracts established between the Consultant and the clients of the City during the Term of this Agreement.

- 19.2 The Consultant agrees that during the Term of this Agreement and for a period of _____ (___) months after the termination of this Agreement, the Consultant will not, without the express consent of the City's Project Manager, directly or indirectly, as an individual, as a member, employee, or agent of a firm, as a shareholder, director, officer, employee or agent of a corporation, or as part of any other organization or group, participate in, assist, engage in, advise or consult for, permit the Consultant's name to be used by, or be in any way connected with any business similar in nature to all or any part of the City's business or which competes in any way with the City's business.

20.0 NO CONFLICT OF INTEREST

- 20.1 The Consultant agrees that during the Term of this Agreement, the Consultant will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Consultant's. Without limiting the general scope of this Section 20.1 and by way of example only, the Consultant is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a Request for Proposal or otherwise giving that person an unfair competitive advantage over other proponents responding to a Request for Proposals by the City. The Consultant now acknowledges that a breach of this Section 20.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act (Canada)* and *Criminal Code of Canada*, and accordingly, could be punishable as a crime (as well as a breach of contract).
- 20.2 The Consultant now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Consultant's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is (a) an elected official or employee of the City or (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

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21.0 NON-RESIDENT WITHHOLDING TAX

21.1 If the Consultant is, at any time, a non-resident of Canada, within the meaning of the *Income Tax Act* of Canada as amended, then, and the Consultant hereby so agrees, the City may deduct from all monies payable under this Agreement and remit to the Receiver-General of Canada, the Government of Canada or Revenue Canada, Taxation sums not greater than the greater of:

21.1.1 25% of all monies payable under this Agreement; and

21.1.2 sums required to be withheld and remitted by the *Income Tax Act* of Canada as amended.

The City will receive full credit under this Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest will be payable by the City on sums withheld, not remitted as aforesaid, and later paid directly to the Consultant.

22.0 COMPLIANCE WITH LAW

22.1 The Consultant will comply with the City of Vancouver License By-law and maintain a valid Business License throughout the duration of the Agreement.

22.2 The Consultant agrees that it will obey all laws and by-laws whether municipal, provincial or federal.

23.0 RESOLUTION OF DISPUTES

23.1 This Agreement will be governed by the laws of the Province of British Columbia and the parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

24.0 INDEPENDENT CONSULTANT

24.1 This Agreement is a contract for services and the Consultant, its permitted Sub-Consultants, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Consultant and its permitted Sub-Consultants are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.

24.2 The Consultant will not represent to anyone that the Consultant has any authority to bind the City in any way or that the Consultant is an employee of the City.

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25.0 INDEPENDENT LEGAL ADVICE

25.1 The Consultant acknowledges that the Consultant has been advised to seek independent legal advice before executing this Agreement.

26.0 LEGALLY BINDING AGREEMENT

26.1 This Agreement will benefit and be legally binding on the parties and their successors and permitted assigns.

26.2 This is the entire agreement between the Consultant and the City regarding its subject, and it terminates or nullifies any negotiations, other agreements or representations made by or between the Consultant and the City. Any modification of this Agreement must be in writing and executed by both the Consultant and the City.

As evidence of their agreement to be bound by the above contract terms, THE CITY and THE CONSULTANT each have executed this Agreement as of the day and year first above written.

CITY OF VANCOUVER

BY: _____ (Seal)
Authorized Signatory

(Full and Precise Name of Consultant)

BY: _____
Authorized Signatory - State Title

D.1 General

- (a) Required Coverage - The Consultant will comply at all times with the insurance provisions set out in this Appendix D.
- (b) Limitations - The requirements set out in this Appendix D do not limit any insurance requirements imposed on the Consultant by municipal, provincial or federal law.
- (c) Additional Coverage - It will be the sole responsibility of the Consultant to determine what additional insurance coverage, if any, is necessary or advisable for the Consultant's own protection and/or to fulfill the Consultant's obligations under this Agreement. Any additional insurance will be provided and maintained by the Consultant at its own expense.

D.2 Requirements For All Policies

- (a) Minimum Limits - Without limiting any of its obligations or liabilities under this Agreement, the Consultant and its Sub-Consultants and subcontractors will obtain and continuously carry during the Term of this Agreement, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.
- (b) Premiums - The Consultant will pay all premiums and deductible costs for all insurance required to be effected under this Agreement provided always that under no circumstances does the payment of such premiums give the Consultant any interest in the proceeds of such insurance or any control over such policies as they relate to the City's interests.
- (c) Insurers - All policies must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*.
- (d) Form of Policy - All insurance policies must be in a form acceptable to the City's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- (e) Notice to City - All insurance policies must provide the City with 60 days' prior written notice of material change, lapse or cancellation. The policy must provide that the notice will identify the Contract title, number, policy holder, and be delivered in accordance with Section [] - *Notices* of this Agreement.
- (f) Insurance Obligations Separate - Neither the providing of insurance by

the Consultant in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Consultant from any other provisions of this Agreement with respect to the liability of the Consultant or otherwise.

- (g) Primary Coverage - The insurance coverage will be primary insurance in respect to the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees or agents will be excess to the insurance effected by the Consultant under this Agreement and will not contribute with it.
- (h) Properly Disclose - The Consultant will properly disclose all risks in each insurance application, ensure that it does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers and underwriters.
- (i) Failure to Provide - If at any time the Consultant fails to provide a certificate of insurance or certified copies of all insurance policies as required in Section D.3 - *Evidence of Insurance*, the City may (but is not obligated to or liable for the manner in which it does so) effect such insurance on behalf of the Consultant and the cost of doing so will be paid by the Consultant to the City upon request and, in any event, within five (5) calendar days of such a request.

D.3 Evidence of Insurance

- (a) Proof of Insurance - Prior to commencement of this Agreement, the Consultant will provide the City with evidence of all required insurance to be taken out in the form of a detailed Certificate of Insurance supported by a certified copy(ies) of the policy(ies). The certificate of insurance must identify the Contract Title, number, policy holder and contract subject-matter, and must not contain any disclaimer. Proof of insurance, in the form of a certificate of insurance or certified copies of all insurance policies, will be made available to the City's Director of Risk Management at any time upon request.
- (b) Cause Sub-Consultants to Carry - The Consultant will ensure that those Sub-Consultants of the Consultant named below will place and maintain the same type of Professional Liability (Errors and Omissions) insurance, and for the same period of time, as is required of the Consultant, except that the policy limits must be no less than the amounts indicated below for each respective Sub-Consultant:

[Insert Sub-Consultant No. 1]. - \$[_____]per claim/\$[_____] in aggregate

[Insert Sub-Consultant No. 2]. - \$[_____]per claim/\$[_____] in aggregate

[Insert Sub-Consultant No. 3]. - \$[_____]per claim/\$[_____] in aggregate

[THE LIMITS WILL DEPEND ON THE NATURE AND VALUE OF EACH SUB-CONSULTANT'S WORK, AND THESE LIMITS WILL BE SUBJECT TO REVIEW BY THE CITY'S RISK AND EMERGENCY MANAGEMENT DEPARTMENT.]

Upon request, the Consultant will deposit with the City's Director of Risk Management detailed certificates of insurance for the policies it has obtained from its Sub-Consultants and a copy of the insurance-related clauses from those agreements. For further certainty, the above requirements will apply to all replacement and substitution Sub-Consultants.

D.4 Commercial General Liability ("CGL") Insurance

- (a) Must Carry CGL - The Consultant will maintain insurance in sufficient amounts and description to protect the Consultant, its Sub-Consultants, the City and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.
- (b) \$5,000,000 - The limit of commercial general liability insurance must be not less than \$5,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.
- (c) Form of Policy - The policy of insurance will:
 - i. be on an occurrence form,
 - ii. add the City and its officials, officers, employees and agents as additional insureds,
 - iii. contain a cross-liability or severability of interests clause,
 - iv. extend to cover non-owned automobiles, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery.
- (d) Primary Insurance

Pursuant to Section D.2(g) - *Primary Coverage*, the Consultant's

commercial general policy will be primary insurance in respect to the City.

D.5 Motor Vehicle Liability Insurance

The Consultant will maintain motor vehicle liability insurance for owned and leased or licensed vehicles with limits of \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Whether or not the policy has been issued pursuant to a government operated automobile insurance system, the Consultant will provide the City's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Consultant and its permitted Sub-Consultants used in connection with this Agreement.

D.6 Professional Liability (Errors and Omissions) Insurance

- (a) Form of Coverage - An Architects' & Engineers' Professional Liability Insurance policy will be arranged and maintained in full force by the Consultant for the Term of this Agreement and for a further period of two (2) years following expiry of the Term. The policy must protect the Consultant and its officers, officials, employees and agents performing services for and on behalf of the Consultant against all liability resulting from an error, omission or negligent act in the provision of the Services under this Agreement.
- (b) \$3,000,000 - The limit of this policy must be no less than \$3,000,000 per claim, and \$3,000,000 annual aggregate.
- (c) Deductible - The policy will provide for a limit of deductibility of not greater than \$50,000.
- (d) Project Specific - The insurance coverage provided by the policy may be "Project Specific".

D.7 Property Insurance

- (a) Form of Coverage - The Consultant will maintain an All-Risks insurance policy covering the Consultant's property of every description.
- (b) Waiver of Subrogation - The policy must contain a provision in which the insurer waives all rights which it may acquire by payment of a claim to recover the paid amount from the City or its officers, officials, employees or agents (a "Waiver of Subrogation").

- (c) *All Property Insurance Must Contain Waiver* - All property insurance policies of any kind carried by the Consultant must contain a Waiver of Subrogation in favour of the City (whether or not such property insurance is carried as a requirement of this Agreement).

CITY OF VANCOUVER CONTRACT NO. [_____]
SOUTHEAST FALSE CREEK AND OLYMPIC VILLAGE
INTEGRATED SITE SERVICING DESIGN SERVICES

PRIME CONTRACTOR AGREEMENT FORM

1.0 DEFINITIONS

Owner	The City of Vancouver, according to the <i>Workers Compensation Act (Part III, Division 1)</i> .
Prime Contractor	[LEGAL NAME OF SUCCESSFUL PROPONENT TO BE INSERTED], the Consultant designated by the Owner to be the Prime Contractor on the Work Site with respect to occupational health and safety ONLY.

2.0 RESPONSIBILITIES

Prime Contractor Candidate

The candidate for Prime Contractor will provide a copy of its WCB "Clearance Letter", a signed copy of this document and all other documents requested to the Owner.

Prime Contractor

During the Term of the Agreement, the Prime Contractor will:

- a) notify the Owner of any changes of status with the WCB;
- b) ensure the health and safety of the workers on the Work Site;
- c) inform all others on the Work Site that it is the Prime Contractor;
- d) coordinate all occupational health and safety activities for the Work Site;
- e) do everything practicable to establish and maintain a system or process to ensure all employers at the Work Site comply with the *Workers Compensation Act*, and the *Workers' Compensation Board Occupational Health and Safety Regulations ("WCB OH&S Regulations")*;
- f) review and complete a "Pre-Job Meeting Form" if requested by the Owner;
- g) submit the Notice of Project to the WCB;
- h) comply with *WCB OH&S Regulation 20.2* for the general requirements of a Notice of Project;
- i) where workers of two (2) or more employers are working at the same time and the combined workforce is greater than five (5) on the Work Site, identify and designate a Qualified Coordinator to coordinate health and safety activities; and
- j) provide the information listed in *WCB OH&S Regulation 20.3(4)* at the Work Site.

Prime Contractor's Qualified Coordinator (Construction Only)

The Prime Contractor's Qualified Coordinator will comply with the "Duties of the Qualified Coordinator" as listed in *WCB OH&S Regulation 20.3(3)* or page 13 of the Owner's Multiple Employer Workplace / Contractor Coordination Program (2003).

3.0 DESIGNATION

By signing this agreement, [INSERT SUCCESSFUL PROPONENT'S LEGAL NAME] accepts all responsibilities of a **Prime Contractor** as outlined in the Owner's Contractor Coordination Program (2003), *Part III* of the *Workers Compensation Act*, and *WCB OH&S Regulations*.

As a Consultant signing this agreement with the Owner, [INSERT SUCCESSFUL PROPONENT'S LEGAL NAME] agrees that its company and its Sub-Consultants, and their management staff, supervisory staff, employees, workers and agents will comply with *Part III* of the *Workers Compensation Act* and *WCB OH&S Regulations*.

Any Workers' Compensation Board violation by the Prime Contractor may be considered a breach of contract resulting in possible termination or suspension of the contract and/or any other actions deemed appropriate at the discretion of the Owner.

Any penalties, sanctions or additional costs levied against the Owner, as a result of the actions of the Prime Contractor, are the responsibility of the Prime Contractor.

I, the undersigned, acknowledge having read and understood the information above. By signing this agreement, I agree as a representative of the firm noted below, to accept all responsibilities of the **Prime Contractor** for this project.

Date: _____

Consultant's Name _____

Qualified Coordinator's Name: _____
(Construction Only)

Authorized Signatory - State
Title _____